

Effective date: 2/10/16

SUMMARY OF EXPRESS TERMS

The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the New York State Justice Center for the Protection of People with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions, such as “persons with serious mental illness,” “abuse,” “neglect,” “reasonable cause to suspect,” “reportable incident,” “Justice Center,” “custodian,” “Department,” “facility subject to the Justice Center,” and “significant incident.”
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;
- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;
- amend sections 487.7 and 488.7 to remove outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities

regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;

- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;
- add new sections 487.14 and 488.13 to address reporting of certain incidents; and
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center.

Pursuant to the authority vested in the Commissioner by Sections 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h of the Social Services Law, and L. 1997, ch.436, Part 487 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows. Pursuant to the authority vested in the Commissioner by Sections 20(3)(d), 34(3)(f), 131-o, 460 and 461 of the Social Services Law, L. 1997, ch.436, and L. 2012, ch. 501, Part 488 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows. Both revised Parts 487 and 488 of Title 18 to be effective upon publication of a Notice of Adoption in the New York State Register.

PART 487

Standards for Adult Homes

(Statutory Authority: Social Services Law §§ 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h; L. 1997, ch.436; L. 2012, ch. 501)

Section 487.2 is amended to add a new paragraph (d) to read as follows:

(d) The following additional definitions shall apply to facilities subject to the Justice Center as defined at paragraph (8) of this subdivision (d):

(1) *Abuse* shall mean inappropriate physical contact with a resident of an adult care facility while the resident is under the supervision of the facility, which harms or is likely to harm the resident. Inappropriate physical contact includes, but is not limited to, striking, pinching, kicking, shoving, and bumping. *Abuse* shall, in addition, include those actions incorporated within the definitions *physical*

abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, use of aversive conditioning, obstruction of reports of reportable incidents, and unlawful use or administration of a controlled substance all as defined in section 488 of the Social Services Law. However, for purposes of reporting, psychological abuse need not be supported by a clinical assessment in order to be reported, so long as there is reasonable cause to suspect that such abuse has occurred.

(2) Neglect shall mean the failure to provide timely, consistent, safe, adequate and appropriate services, treatment and/or care to a resident of an adult care facility while the resident is under the supervision of the facility, including but not limited to: personal care, nutrition, medication, therapies, sanitary clothing and surroundings, and activities of daily living. Neglect shall, in addition, include those actions incorporated within the definition of neglect set forth in section 488 of the Social Services Law.

(3) Reasonable cause to suspect shall mean that, upon review of the circumstances, there is sufficient evidence for a person to believe that a reportable incident has occurred.

(4) Reportable incident shall include abuse, neglect, and significant incident as defined in this Part.

(5) Justice Center shall mean the New York State Justice Center for the Protection of People with Special Needs, as established pursuant to Chapter 501 of the Laws of 2012.

(6) Custodian means a director, operator, employee or volunteer of a facility or provider agency as defined in section 488 of the Social Services Law; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have

regular and substantial contact with individuals who are cared for by the facility or provider agency.

(7) *Department* shall mean the New York State Department of Health.

(8) *Facility subject to the Justice Center* shall mean adult homes having a capacity of eighty (80) or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the Mental Hygiene Law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds.

(9) *Significant incident* shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services and shall include but not be limited to:

(i) conduct between persons receiving services, or between such persons and third parties other than a custodian, that would constitute abuse if committed by a custodian; or

(ii) conduct on the part of a custodian, which is inconsistent with a service recipient's individual treatment plan or individualized educational program, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a person receiving services, including but not limited to:

(a) *unauthorized seclusion*, which shall mean the placement of a person receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will;

(b) *unauthorized use of time-out*, which shall mean the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but shall not include the use of a time-out as an emergency intervention to protect the health or safety of the individual or other persons;

(c) except for the unlawful use or administration of a controlled substance, as provided for in paragraph (1) of this subdivision, the administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on a service recipient. For purposes of this paragraph, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of a service recipient;

(d) *inappropriate use of restraints*, which shall mean any use of a restraint; or

(iii) *Misappropriation of Property* shall mean the theft, unauthorized use or removal, embezzlement or intentional destruction of the resident's personal property, including but not limited to money, clothing, furniture, appliances, jewelry, works of art and such other possessions and articles belonging to the resident, regardless of monetary value.

(iv) *Mistreatment*, which shall mean confinement, isolation, intimidation, abandonment or use of physical restraints on a resident of an adult care facility while the resident is under the supervision of staff.

(v) any other conduct identified in regulations of the department, pursuant to guidelines or

standards established by the Justice Center.

Subparagraph (ix) of paragraph (3) of subdivision (a) of section 487.5 is amended to read as follows:

(ix) A resident shall have the right to receive courteous, fair and respectful care and treatment at all times, and shall not be physically, mentally or emotionally abused, or [neglected in any manner] subject to any occurrence which would constitute a reportable incident.

Paragraph (3) of subdivision (c) of section 487.5 is amended to read as follows:

(3) The operator shall post the procedures for the submission of grievances and recommendations, including the identity of staff to whom the grievances and recommendations may be addressed. The operator of a facility subject to the Justice Center shall also ensure that the telephone number for the Justice Center's hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to residents, staff, volunteers, and contractors.

Subparagraph (x) of paragraph (1) of subdivision (d) of section 487.7 is amended to read as follows:

(x) investigation by the administrator or case manager of incidents involving resident endangerment, injury, occurrences which would constitute reportable incidents or death.

Paragraph (10) of subdivision (d) of section 487.7 is amended to read as follows:

(10) If it is believed that a felony crime may have been committed by or against a resident, the operator must immediately report the occurrence to the appropriate regional office of the Department of Health by telephone and submit a copy of the incident report (DSS-3123), which must be received by the appropriate regional office of the Department of Health, within 24 hours of the occurrence. The operator also must notify an appropriate law enforcement authority as soon as possible but at least within 24 hours. [In addition, the operator must submit a report to the State Commission on Quality of Care for the Mentally Disabled, on a form prescribed by the commission, if the resident had at any time received services from a mental hygiene service provider. Such form must be received by the commission within the 2 hours of the occurrence.]

Subparagraph (iii) of paragraph (12) of subdivision (d) of section 487.7 is amended to read as follows:

(iii) submit a copy of incident reports (DSS-3123) required in paragraph (11) of this subdivision to the appropriate regional office of the department [; if the resident is a participant in a service program operated under a cooperative agreement with the operator, to that organization, and for all residents who had, at any time received services from a mental hygiene service provider, to the State Commission on Quality of Care for the Mentally Disabled].

A new paragraph (14) of subdivision (d) of section 487.7 is added to read as follows:

(14) If the facility falls within the definition of a facility as defined in section 488(4) of the Social Services Law, the operator shall immediately upon discovery, orally or electronically inform the Justice Center, as required by the Justice Center, of any occurrence constituting a reportable incident, including the name, title and contact information of every person known to have the same information as the person reporting concerning the reportable incident. Such report must be received by the Justice Center within twenty-four (24) hours of the discovery of such occurrence.

Subparagraphs (v) and (vi) of paragraph (3) of subdivision (a) of section 487.9 are amended to read as follows, and new subparagraphs (vii) and (viii) of paragraph (3) of subdivision (a) of section 487.9 are added to read as follows:

(v) discussion relative to the specific duties and tasks to be performed; [and]

(vi) training in emergency procedures[-];

(vii) with respect to facilities subject to the Justice Center, training in the identification of reportable incidents, facility reporting procedures and, if the employee is a mandated reporter under section 488 of the Social Services Law or otherwise required to report under section 424-a of the Social Services Law, such person's responsibility to file reports under those provisions; and

(viii) with respect to facilities subject to the Justice Center, provision of a copy of the code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands such code of conduct. Any other individuals, including contractors or other service providers who will or could have resident contact, and falling within the definition of “custodian” under Section 488 of the Social Services Law, must also be provided with, and acknowledge receipt and understanding of, such code of conduct.

Subparagraphs (i) and (ii) of paragraph (7) of subdivision (a) of section 487.9 are amended to read as follows, and new subparagraphs (iii) and (iv) of paragraph (7) of subdivision (a) of section 487.9 are added to read as follows:

(i) individual employee records containing verification of qualifications for any position for which qualifications are set by regulation, medical evaluation, and any incident reports involving the employee; [and]

(ii) payment records containing all wages, benefits, reimbursements, bonuses, and gifts or payments given each employee[.];

(iii) with respect to facilities subject to the Justice Center, documentation that the facility has verified, through consultation with the Justice Center, prior to hiring the employee, volunteer, or contractor

falling within the definition of “custodian” in section 488 of the Social Services Law, whether the individual is on the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law (staff exclusion list) and, where such individual is not on such list, documentation that the facility has verified whether the individual is on the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment (State Central Registry); and

(iv) Prior to hiring or otherwise engaging anyone who will or may have direct contact with residents, or approving credentials for any such person, the operator of a facility subject to the Justice Center shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list. If such person is not on the Justice Center's staff exclusion list, such operator shall also consult the State Central Registry as required by section 424-a of the Social Services Law. If such person is on the staff exclusion list, a facility subject to the Justice Center shall not hire or otherwise engage such person; if such person is not on the staff exclusion list but is on the State Central Registry, a facility subject to the Justice Center shall consider the inclusion of such person on the State Central Registry as a factor in its decision, but shall not be prohibited from hiring or otherwise engaging such person.

A new paragraph (17) of subdivision (a) of section 487.9 is added to read as follows:

(17) Prior to hiring or otherwise engaging any employee, volunteer or others falling within the

definition of *custodian* under section 488 of the Social Services Law which will or may have direct contact with residents, the operator of a facility subject to the Justice Center shall consult with the Justice Center for the Protection of People with Special Needs [as defined herein], to verify that such person is not on the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law (staff exclusion list).

Subparagraphs (viii) and (ix) of paragraph (8) of subdivision (c) of section 487.9 are amended to read as follows, and a new subparagraph (x) of paragraph (8) of subdivision (c) of section 487.9 is added to read as follows:

(viii) protection of residents' rights and development of appropriate mechanisms for their protection;
[and]

(ix) maintenance of a system to enable residents to present grievances or recommendations regarding facility operations and programs[-]; and

(x) investigation of and reporting to the department allegations of occurrences which would constitute a reportable incident.

A new subparagraph (iii) of paragraph (1) of subdivision (d) of section 487.9 is added to read as

follows:

(iii) In a facility where the administrator is acting as case manager, the operator must designate an employee in addition to the administrator to be a designated investigator and reporter of occurrences which would constitute a reportable incident. Nothing in this subparagraph shall relieve any mandated reporter of his or her legal obligations to report reportable incidents.

Paragraph (3) of subdivision (d) of section 487.9 is amended to read as follows:

(3) A case manager shall be capable of, and responsible for, executing, through direct performance and coordination of:

(a) the services and functions stipulated in section 487.7(g) of this Part[.]; and

(b) investigation of and reporting to the department and, as applicable, to the Justice Center, allegations of occurrences which would constitute a reportable incident.

Paragraph (b) of section 487.10 is amended to read as follows:

(b) The department or its designee may examine the books and records of any facility to determine the accuracy of the annual financial statement, or for any other reason deemed appropriate by the department to effectuate the purposes of these regulations. The Justice Center shall have access to any residential care facility within its jurisdiction and adult care facilities in which a resident received

mental health services as described in 487.7(d)(8)(iv), 487.7(d)(9)(ii), and 487.7(d)(10), and to information, reports or records in such facility's possession as needed to carry out the functions, powers and duties of the Justice Center. The department and the Justice Center shall, when required by law, or when so directed by the department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents.

A new paragraph (i) of section 487.10 is added to read as follows:

(i) Except as otherwise prohibited by law, the operator of a *facility*, as defined in section 488(4) of the Social Services Law and who is not otherwise subject to article six of the Public Officers Law, shall make records available for public inspection and copying to the extent required by subdivision six of Section 490 of the Social Services Law and regulations of the Justice Center.

A new section 487.14 is added to read as follows:

487.14 Reporting of Reportable Incidents.

Facilities subject to the Justice Center, and any individuals associated with such facility, or performing work for it, who fall within the definition of *mandated reporter* under section 488 of the Social Services Law, shall report any occurrence constituting a reportable incident immediately to the Justice Center upon having *reasonable cause to suspect* that a reportable incident has occurred.

(a) Circumstances to be reviewed that may lead to a *reasonable cause to suspect* conclusion might

include, but are not limited to:

- (i) A statement that a reportable incident has occurred;
 - (ii) The presence of a physical condition (e.g. a bruise) which is inconsistent with the history or course or treatment of the resident; or
 - (iii) A visual or aural observation of an act or condition indicating the occurrence of a reportable incident.
- (b) Such facilities must report to the Justice Center reportable incidents, including injuries of unknown origin, if and when the *reasonable cause to suspect* threshold has been achieved. This might occur before the facility investigation into the incident has begun or at any time during the investigation.
- (c) If the *reasonable cause to suspect* threshold has not been achieved, notification to the Justice Center is not required.
- (d) When an alleged reportable incident occurs, the facility is required to initiate an investigation. The Justice Center, and/or the department, may also investigate the incident.
- (e) Such reporting obligations are in addition to those otherwise provided for under this Part.

A new section 487.15 is added to read as follows:

487.15 Investigations involving facilities subject to the Justice Center

Investigations involving facilities subject to the Justice Center shall proceed consistent with the following requirements:

(a) Facilities must investigate all occurrences of reportable incidents, including injuries of unknown origin. Facility policy and procedures must address the process of investigating an incident at the facility level. Such process must include, at minimum, the following elements:

(i) immediately upon notice of an occurrence constituting a reportable incident, including injuries of unknown origin, the facility must obtain a medical examination, as indicated by the circumstances, of any physically injured individual, record the name of the examiner and retain his/her written findings.

(ii) the facility must promptly identify and interview witnesses to the incident. Such interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of, or under circumstances in which other parties or witnesses may perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed.

(iii) the facility must review pertinent information (e.g., medical and other records, observe the scene of the incident, expert assessments, outside service provider information);

(iv) the facility must identify physical evidence, if any, and take appropriate measures to safeguard and preserve such evidence;

(v) the facility must establish scope and severity, including duration, staff involvement, number of residents involved and resident outcomes;

(vi) the facility must document each of the investigative steps taken;

(vii) upon completion of the investigation, a written report shall be prepared by the facility which shall include all relevant findings and information obtained in the investigation with reference to the supporting information obtained in the investigation, and details of steps taken to investigate the incident. The facility director must make a written endorsement of such findings. Such findings must also identify and document the remedial steps to be taken, and designate the person responsible for assessing the efficacy of the remedial action taken. The results of the investigation shall be promptly reported to the department and to the Justice Center.

(b) The investigation must be conducted by the administrator or case manager or, if applicable, the administrator's designee.

(c) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible by law or regulation.

(d) Investigations of reportable incidents must be completed, and the results of such investigation reported to the department, within five calendar days of the discovery of the incident. Additional time for completion of the investigation may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. For purposes of this section, "complete" shall mean that all necessary information has been obtained to determine whether and how the incident occurred, to determine the remedial action necessary to address the occurrence, and to complete the findings referenced in paragraph (a)(vii) of this section.

(e) If any remedial action is necessary, the operator, in collaboration with the

department, shall establish a plan in writing. The plan shall indicate the operator's agreement to the remediation and identify a follow-up date and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported, to the Justice Center.

(f) except to the extent otherwise prohibited by law, the facility shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center upon request, in the form and manner requested. Such information must be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in paragraph (d) of this section. Failure to provide such information in response to a reasonable request by the Justice Center shall be considered a violation of the facility's responsibilities under these regulations. The department and the Justice Center shall, except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of this section.

(g) incident review committees are established; provided, however, that the Department may consider and approve requests for exemptions on a case-by-case basis, based on the size of the facility or provider agency or other relevant factors. A request for an exemption must include a written justification. Such committee shall consist of persons identified by the director of the facility, including some members of the following: at least two (2) direct support staff, two (2) licensed health care practitioners, two residents and two family members, but not the director of the facility or provider agency. Such committee shall meet to: (i) review the timeliness, thoroughness and appropriateness of the facility or provider agency's responses to reportable incidents; (ii) recommend additional

opportunities for improvement to the director of the facility or provider agency, if appropriate; (iii) review incident trends and patterns concerning reportable incidents; and (iv) make recommendations for the director of the facility or provider agency to assist in reducing reportable incidents. Such meetings shall occur within one month following the issuance of findings associated with the investigation of an incident, and in the absence of such incident, no less than quarterly. Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section 74 of the Public Officers Law.

(h) The department and the Justice Center may undertake investigations even if the facility is also investigating a matter. Investigations undertaken by the department shall conform to the elements specified in paragraph (a) of this section. Department investigations shall also comply with paragraphs (c), (d) and (e) of this section, except that the deadline for providing the final report of the investigation to the Justice Center shall be fifty days from the date the Justice Center accepted a report of abuse or neglect, and sixty days from the date the Justice Center accepted a report of a significant incident.

(i) The department or the Justice Center may direct a facility to cease its investigation, or to modify its investigation, even if such direction results in practice which varies from the requirements of subparagraphs (a) through (g) of this section. The facility shall maintain documentation of such directives within the facility's records. Such documentation shall include the name of the department or Justice Center representative issuing the directive and the date when the facility was directed to cease its investigation.

PART 488

Adult Care Facilities Standards for Enriched Housing

(Statutory Authority: Social Services Law §§ 20(3)(d), 34(3)(f), 131-o, 460 and 461; L. 1997, ch.436; L. 2012, ch.501)

Section 488.2 is amended to add new paragraph (c) to read as follows:

(c) The following additional definitions shall apply to facilities subject to the Justice Center as defined at paragraph (8) of this subdivision (c):

(1) Abuse shall mean inappropriate physical contact with a resident of an adult care facility while the resident is under the supervision of the facility, which harms or is likely to harm the resident. Inappropriate physical contact includes, but is not limited to, striking, pinching, kicking, shoving, and bumping. Abuse shall, in addition, include those actions incorporated within the definitions physical abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, use of aversive conditioning, obstruction of reports of reportable incidents, and unlawful use or administration of a controlled substance all as defined in section 488 of the Social Services Law. However, for purposes of reporting, psychological abuse need not be supported by a clinical assessment in order to be reported, so long as there is reasonable cause to suspect that such abuse has occurred.

(2) Neglect shall mean the failure to provide timely, consistent, safe, adequate and appropriate services, treatment and/or care to a resident of an adult care facility while the resident is under the supervision of the facility, including but not limited to: personal care, nutrition, medication, therapies, sanitary clothing and surroundings, and activities of daily living. Neglect shall, in addition, include those actions incorporated within the definition of neglect set forth in section 488 of the Social Services Law.

(3) Reasonable cause to suspect shall mean that, upon review of the circumstances, there is

sufficient evidence for a person to believe that a reportable incident has occurred.

(4) *Reportable incident* shall include abuse, neglect, and significant incident as defined in this Part.

(5) *Justice Center* shall mean the New York State Justice Center for the Protection of People with Special Needs, as established pursuant to Chapter 501 of the Laws of 2012.

(6) *Custodian* means a director, operator, employee or volunteer of a facility or provider agency as defined in section 488 of the Social Services Law; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the facility or provider agency.

(7) *Department* shall mean the New York State Department of Health.

(8) *Facility subject to the Justice Center* shall mean enriched housing programs having a capacity of eighty (80) or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the Mental Hygiene Law, but not including an enriched housing program which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds.

(9) *Significant incident* shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services and shall include but not be limited to:

(i) conduct between persons receiving services, or between such persons and third parties other than a custodian, that would constitute abuse if committed by a custodian; or

(ii) conduct on the part of a custodian, which is inconsistent with a service recipient's individual treatment plan or individualized educational program, generally accepted treatment practices

and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a person receiving services, including but not limited to:

(a) *unauthorized seclusion*, which shall mean the placement of a person receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will;

(b) *unauthorized use of time-out*, which shall mean the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but shall not include the use of a time-out as an emergency intervention to protect the health or safety of the individual or other persons;

(c) except for the unlawful use or administration of a controlled substance, as provided for in paragraph (1) of this subdivision, the administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on a service recipient. For purposes of this paragraph, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of a service recipient;

(d) *inappropriate use of restraints*, which shall mean any use of a restraint; or

(iii) *Misappropriation of Property* shall mean the theft, unauthorized use or removal, embezzlement or intentional destruction of the resident's personal property, including but not limited to money, clothing, furniture, appliances, jewelry, works of art and such other possessions and articles belonging to the resident, regardless of monetary value.

(iv) *Mistreatment*, which shall mean confinement, isolation, intimidation, abandonment or use

of physical restraints on a resident of an adult care facility while the resident is under the supervision of staff.

(v) any other conduct identified in regulations of the department, pursuant to guidelines or standards established by the Justice Center.

Subparagraph (i) of paragraph (3) of subdivision (a) of section 488.5 is amended to read as follows:

(i) to receive courteous, fair and respectful care and treatment, and not be physically, mentally or emotionally abused, or[neglected in any manner] subject to any occurrence which would constitute a reportable incident;

A new subparagraph (iii) of paragraph (1) of subdivision (b) of section 488.5 is added to read as follows:

(iii) The operator of a facility subject to the Justice Center shall post the procedures for the submission of grievances and recommendations, including the identity of staff to whom the grievances and recommendations may be addressed. The operator of a facility subject to the Justice Center shall also ensure that the telephone number for the Justice Center's hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to residents, staff, volunteers, and contractors.

Subparagraph (iv) of paragraph (1) of subdivision (b) of section 488.7 is amended to read as follows:

(iv) investigation of incidents involving resident health, safety, injury, occurrences which would constitute a reportable incident, or death.

Subparagraph (iv) of paragraph (8) of subdivision (b) of section 488.7 is amended to read as follows:

(iv) immediately following the discovery of the death and submit a written report to the [State Commission on Quality of Care for the Mentally Disabled] Justice Center, on a form prescribed by the [commission] Justice Center, if the resident [had at any time] received services from a mental hygiene service provider within 24 months preceding the date of the death. Such form must be received by the [commission] Justice Center within 24 hours of the discovery of the death. Reports by facilities subject to the Justice Center of incidents which would be reportable incidents shall be made pursuant to sections 488.7(b)(14) and 488.13 of this Part.

Subparagraph (ii) of paragraph (9) of subdivision (b) of section 488.7 is amended to read as follows:

(ii) immediately following discovery of the incident, inform the Justice Center of such incident, orally or electronically, as required by the Justice Center, and submit a written report to the Justice Center[State Commission on Quality of Care for the Mentally Disabled], on a form prescribed by the Justice Center[commission], if the resident [had at any time]received services from a mental hygiene service provider within 24 months preceding the date of the incident. Such form must be received by the Justice Center [commission] within 24 hours of the discovery of the attempted suicide. Reports by facilities subject to the Justice Center of incidents which would be reportable incidents shall be made pursuant to sections 488.7(b)(14) and 488.13 of this Part.

Paragraph (10) of subdivision (b) of section 488.7 is amended to read as follows:

(10) If it is believed that a felony crime may have been committed by or against a resident, the operator must immediately report the occurrence to the appropriate regional office of the Department of Health by telephone and submit a copy of the Incident Report (DSS-3123), which must be received by the

appropriate regional office of the Department of Health, within 24 hours of the occurrence. The operator also must notify an appropriate law enforcement authority as soon as possible but at least within 24 hours. In addition, the operator must immediately upon discovery of the occurrence, inform the Justice Center of the occurrence, orally or electronically, as required by the Justice Center, and must submit a written report to the Justice Center[State Commission on Quality of Care for the Mentally Disabled], on a form prescribed by the Justice Center[commission], if the resident [had at any time]received services from a mental hygiene service provider within the 24 months preceding the date of the occurrence believed to be a felony crime. Such form must be received by the [commission] Justice Center within 24 hours of the discovery of the occurrence. Reports by facilities subject to the Justice Center of incidents which would be reportable incidents shall be made pursuant to sections 488.7(b)(14) and 488.13 of this Part.

A new paragraph (14) is added to subdivision (b) of section 488.7 to read as follows:

(14) If the facility falls within the definition of a facility as defined in section 488(4) of the Social Services Law, the operator shall immediately upon discovery, inform the Justice Center, orally or electronically, as required by the Justice Center, of any occurrence constituting a reportable incident, as defined in section 488(1) of the Social Services Law, including the name, title and contact information of every person known to have the same information as the person reporting concerning the reportable incident. Such written report must be received by the Justice Center within twenty-four (24) hours of the discovery of such occurrence.

Subparagraphs (iv) and (v) of paragraph (2) of subdivision (a) of section 488.9 are amended to read as follows, and new subparagraphs (vi) and (vii) of paragraph (2) of subdivision (a) of section 488.9 is added to read as follows:

(iv) discussion of the general and specific duties and responsibilities of the individual(s) being trained;
[and]

(v) training in emergency procedures[.];

(vi) with respect to facilities subject to the Justice Center, training in the identification of reportable incidents, facility reporting procedures and, if the employee is a mandated reporter under section 488 the Social Services Law or otherwise required to report under section 424-a of the Social Services Law, such person's responsibility to file reports under those provisions; and

(vii) with respect to facilities subject to the Justice Center, provision of a copy of the code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands such code of conduct. Any other individuals, including contractors or other service providers who will or could have resident contact, and falling within the definition of "custodian" under Section 488 of the Social Services Law, must also be provided with, and acknowledge receipt and understanding of, such code of conduct.

Paragraph (4) of subdivision (a) of section 488.9 is amended to read as follows,

(4) The operator must maintain personnel records which include:

(i) individual employee records containing verification of qualifications for any position for which

qualifications are set by regulation, pre-employment and annual medical evaluations, and any incident reports involving the employee; [and]

(ii) payment records containing all wages, benefits, reimbursements, bonuses, gifts or payments given each employee[.];

(iii) with respect to facilities subject to the Justice Center, documentation that the facility has verified, through consultation with the Justice Center, prior to hiring the employee, volunteer, or contractor falling within the definition of “custodian” in section 488 of the Social Services Law, whether the individual is on the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law (staff exclusion list) and, where such individual is not on such list, documentation that the facility has verified whether the individual is on the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment (State Central Registry); and

(iv) Prior to hiring or otherwise engaging anyone who will or may have direct contact with residents, or approving credentials for any such person, the operator of a facility subject to the Justice Center shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list. If such person is not on the Justice Center's staff exclusion list, such operator shall also consult the State Central Registry as required by section 424-a of the Social Services Law. If such person is on the staff exclusion list, a facility subject to the Justice Center shall not hire or otherwise engage such person; if a person is not on the staff exclusion list but is on the State Central Registry, a facility subject to the Justice Center shall consider the inclusion of such person on the State Central Registry as a factor in its decision, but shall not be

prohibited from hiring or otherwise engaging such person.

A new paragraph (13) of subdivision (a) of section 488.9 is added to read as follows:

(13) Prior to hiring or otherwise engaging any employee, volunteer or others falling within the definition of *custodian* under section 488 of the Social Services Law which will or may have direct contact with residents, the operator of a facility subject to the Justice Center shall consult with the Justice Center, to verify that such person is not on the Justice Center's registry of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law (staff exclusion list).

Subparagraphs (viii) and (ix) of paragraph (3) of subdivision (c) of section 488.9 are amended to read as follows, and a new subparagraph (x) of paragraph (3) of subdivision (c) of section 488.9 is added to read as follows:

(viii) protection of residents' rights and development of appropriate mechanisms for the residents' protection;[and]

(ix) maintenance of a system to enable residents to present grievances or recommendations regarding facility operations and programs[.]; and

(x) investigation of and reporting to the department allegations of occurrences which would constitute a reportable incident.

Paragraphs (1) and (2) of subdivision (d) of section 488.9 are amended to read as follows:

(d) *Case management* (1) Each operator must designate sufficient staff to perform case management functions. This function may be carried out by the program coordinator. In the event that the case management function is being carried out by the program coordinator, the operator must designate an employee in addition to the program coordinator to be a designated investigator and reporter of occurrences which would constitute a reportable incident. However, nothing in this paragraph shall relieve any mandated reporter from his or her obligations under law. A qualified case manager must be on staff and on duty for one-half hour per week per program resident.

(2) A case manager must be capable of, and responsible for, executing, through direct performance and coordination[,] of:

(a) the services and functions described in section 488.7(e) of this Part; and

(b) investigation of and reporting to the department allegations of occurrences which would constitute a reportable incident.

Paragraph (b) of section 488.10 is amended to read as follows:

(b) The department may examine the books and records of any enriched housing program to determine the accuracy of the annual financial statement or for any other reason deemed appropriate by the department to effectuate the purposes of this Title. The Justice Center shall have access to any enriched housing program in which a resident who received mental health services as described in 488.7(b)(8)(iv), 488.7(b)(9)(ii), and 488.7(b)(10), and information, reports or records in such enriched housing program's possession as needed to carry out the functions, powers and duties of the Justice Center. The department and the Justice Center shall, when required by law, or when so directed by the

department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents.

A new paragraph (i) is added to section 488.10 to read as follows:

(i) Except as otherwise prohibited by law, the operator of a facility, as defined in section 488(4) of the Social Services Law and not otherwise subject to article six of the Public Officers Law shall make records available for public inspection and copying to the extent required by subdivision six of Section 490 of the Social Services Law and regulations of the Justice Center.

A new section 488.13 is added to read as follows:

488.13 Reporting of Reportable Incidents.

Facilities subject to the Justice Center, and any individuals associated with such facility, or performing work for it, who fall within the definition of “mandated reporter” under Section 488 of the Social Services Law, shall report any occurrence constituting a reportable incident immediately to the Justice Center upon having “reasonable cause” to suspect that abuse, neglect or mistreatment or misappropriation has occurred.

(a) Circumstances to be reviewed that may lead to a “reasonable cause” to suspect conclusion might include, but are not limited to:

(i) A statement that a reportable incident has occurred;

(ii) The presence of a physical condition (e.g. a bruise) which is inconsistent with the history or course or treatment of the resident; or

(iii) A visual or aural observation of an act or condition indicating the occurrence of a reportable

incident.

(b) Such facilities must report to the Justice Center reportable incidents, including injuries of unknown origin, if and when the “reasonable cause” to suspect threshold has been achieved. This might occur before the facility investigation into the incident has begun or at any time during the investigation.

(c) If the “reasonable cause” to suspect threshold has not been achieved, notification to the Justice Center is not required.

(d) When an alleged occurrence of a reportable incident occurs, the facility is required to initiate an investigation. The Justice Center, and/or the department, may also investigate the incident.

(e) Such reporting obligations are in addition to those otherwise provided for under this Part.

A new section 488.14 is added to read as follows:

488.14 Investigations involving facilities subject to the Justice Center

Investigations involving facilities subject to the Justice Center shall proceed consistent with the following requirements:

(a) Facilities must investigate all alleged violations of reportable incidents, including injuries of unknown origin. Facility policy and procedures must address the process of investigating an incident at the facility level. Such process must include, at minimum, the following elements:

(i) immediately upon notice of the occurrence of a reportable incident, including injuries of unknown origin, the facility must obtain a medical examination, as indicated by the circumstances, of any physically injured individual, record the name of the examiner and retain his/her written findings.

(ii) the facility must promptly identify and interview witnesses to the incident. Such interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of, or under circumstances in which other parties or witnesses may

perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed.

(iii) the facility must review pertinent information (e.g., medical and other records, observe the scene of the incident, expert assessments, outside service provider information);

(iv) the facility must identify physical evidence, if any, and take appropriate measures to safeguard and preserve such evidence;

(v) the facility must establish scope and severity, including duration, staff involvement, number of residents involved and resident outcomes;

(vi) the facility must document each of the investigative steps taken;

(vii) Upon completion of the investigation, a written report shall be prepared which shall include all relevant findings and information obtained in the investigation with reference to the supporting information obtained in the investigation, and details of steps taken to investigate the incident. The facility director must make a written endorsement of such findings. Such findings must also identify and document the remedial steps to be taken, and designate the person responsible for assessing the efficacy of the remedial action taken. The results of the investigation shall be promptly reported to the department and to the Justice Center.

(b) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible by law or regulation.

(c) The procedures required by subparagraphs (a)(2) and (b) of this section may be altered if, and only the extent necessary to, comply with an applicable collective bargaining agreement.

(d) Investigations of reportable incidents must be completed, and the results of such

investigation reported to the department, within five (5) calendar days of the discovery of the incident. Additional time for completion of the investigation may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. For purposes of this section, “complete” shall mean that all necessary information has been obtained to determine whether and how the incident occurred, to determine the remedial action necessary to address the occurrence, and to complete the findings referenced in paragraph (a)(vii) of this section.

(e) except to the extent otherwise prohibited by law, the facility shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center upon request, in the form and manner requested. Such information must be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in paragraph (c) of this section. Failure to provide such information in response to a reasonable request by the Justice Center shall be considered a violation of the facility's responsibilities under these regulations. The department and the Justice Center shall, except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of this section.

(f) If any remedial action is necessary, the operator, in collaboration with the department, shall establish a plan in writing. The plan shall indicate the operator's agreement to the remediation and identify a follow-up date and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported, to the Justice Center.

(g) incident review committees are established; provided, however, that the Department may consider and approve requests for exemptions on a case-by-case basis, based on the size of the facility or provider agency or other relevant factors. A request for an exemption must include a written justification. The facilities incident review committee shall consist of persons identified by the director

of the facility, including some members of the following: at least two (2) direct support staff, two (2) licensed health care practitioners, two residents and two family members, but not the director of the facility or provider agency. Such committee shall meet to: (i) review the timeliness, thoroughness and appropriateness of the facility or provider agency's responses to reportable incidents; (ii) recommend additional opportunities for improvement to the director of the facility or provider agency, if appropriate; (iii) review incident trends and patterns concerning reportable incidents; and (iv) make recommendations for the director of the facility or provider agency to assist in reducing reportable incidents. Such meetings shall occur within one month following the issuance of findings associated with the investigation of an incident, and in the absence of such incident, no less than quarterly. Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section seventy-four of the public officers law.

(h) the department and the Justice Center may undertake investigations even if the facility is also investigating a matter. Investigations undertaken by the department shall conform to the elements specified in paragraph (a) of this section. Department investigations shall also comply with paragraphs (b), (c), and (d) of this section, except that the deadline for providing the final report of the investigation to the Justice Center shall be fifty days from the date the Justice Center accepted a report of abuse or neglect, and sixty days from the date the Justice Center accepted a report of a significant incident.

(i) The department or the Justice Center may direct a facility to cease its investigation, or to modify its investigation, even if such direction results in practice which varies from the requirements of subparagraphs (a) through (f) of this section. The facility shall maintain documentation of directives within the facility's records. Such documentation shall include the name of the department or Justice Center representative who issued the directive and the date when the facility was directed to cease its investigation.

Regulatory Impact Statement Summary

The Department believes that the proposed regulatory amendments enhance the health and safety of those served by adult homes and enriched housing programs.

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employee. Where the prospective employee is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility will not be able to hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list.

Reporting and investigation obligations for all facilities would be expanded to cover “reportable incidents,” which are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions to address reporting and investigation procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities.

Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012.

The costs imposed by these regulatory amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, and should neither impose any significant new costs, nor require any significant change in practice.

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REGULATORY IMPACT STATEMENT

Statutory Authority:

Chapter 501 of the Laws of 2012 requires, in part, that the Department promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, addressing the investigation of “reportable incidents,” as defined in that Chapter Law.

Section 20 of the Social Services Law, in part, authorizes the Department to establish rules, regulations, and policies to carry out its powers and duties under the Social Services Law.

Section 34 of the Social Services Law, in part, authorizes the Commissioner to establish regulations for the administration of public assistance and care within the state.

Section 461 of the Social Services Law, in part, specifically directs and authorizes the Department to promulgate regulations relating to the operation of adult care facilities, which includes adult homes and enriched housing programs.

Section 461-e of the Social Services provides such authority with regard to regulations addressing facility records and reports.

Legislative Objectives:

In enacting Chapter 501 of the Laws of 2012, the Legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York’s human services agencies and programs. The legislation includes certain adult homes and enriched housing programs among the facilities within the purview of the Justice Center, and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The

proposed amendments further the legislative objective of protecting the health and safety of vulnerable persons in such facilities in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to adult homes and enriched housing programs as follows:

1. It included certain adult homes and enriched housing programs as facilities required to comply with the Justice Center requirements.
2. It defined the types of incident required to be reported by certain adult homes and enriched housing programs to the Justice Center Vulnerable Persons' Central Register operated by the Justice Center. Failure to protect residents from the reportable incidents is now included as inadequate supervision of residents.
3. It mandated that the regulations pertaining to certain adult homes and enriched housing programs be amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
4. It required that certain adult homes and enriched housing programs establish an incident review committee.
5. It required that certain adult homes and enriched housing programs consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on that list, also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to ensure that prospective employees are not on that list.

6. It required that certain adult homes and enriched housing programs publicly disclose certain information regarding incidents of abuse or neglect if required by the Justice Center to do so.

The Department's regulations addressing adult homes and enriched housing programs, contained in 10 NYCRR Parts 487 and 488, are being amended in accordance with the aforementioned legislation.

Costs:

Costs to Regulated Parties:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs). The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center's jurisdiction.

Under this rule, facilities within the purview of the Justice Center (i.e., that subset of adult homes and enriched housing programs falling within the definition of "facility" under section 488(4) of the Social Services Law) (hereinafter referred to as "certain facilities") will have an obligation, before hiring new staff, to contact the Justice Center to confirm that the potential employee is not on the Justice Center's staff exclusion list. This would be a slight increase in administrative staff time for the hiring process. The average staff census for all adult care facilities (ACFs) is approximately 20 staff per facility which equals nine hundred forty (940) staff in the aggregate among the approximately forty-seven (47) effected facilities. Although the Department does not have data to precisely identify the turn-over rate in facility staff, assuming an average of twenty percent (20%), or approximately one hundred eighty-eight (188) new hires overall per year may be made statewide, or approximately four (4) new hires per year per facility. For each of these new hires, facility human resources staff would be required to contact the Justice Center to confirm that these potential employees are not on the Justice

Center Exclusion List (SEL). This can be done by telephone; estimated time associated with the consultation is fifteen (15) to thirty (30) minutes per consultation. Thus, the increase in staff time could be as little as two hours per facility per year.

Also under this rule, certain facilities would be obliged to check the names of potential employees, volunteers, and certain others not appearing on the Justice Center Staff Exclusion List (SEL) against the Statewide Child Abuse Registry (SCR). This process requires completion of a formal application and payment of \$25 for each name submitted. Estimated time for completion of this paperwork is one (1) hour of administrative time. Based upon the estimated turnover rate of four hires per facility yearly, the estimated staff time is four (4) hours and the required payment of processing fees is \$100 yearly for each of the forty-seven (47) effected facilities.

Facilities subject to the Justice Center must also assure that employees, volunteers, and others falling within the definition of “mandated reporters” under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of such persons who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the facilities and will take about one hour to review during routine staff training. Facilities subject to the Justice Center must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for residents and others. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

Also under this rule, certain facilities may be obliged to establish and maintain a facility incident review committee, to include persons outside the facility (i.e., family members, practitioners), and at least two (2) direct support staff per facility. The incident review committee would meet in any month in which there was a reportable incident or, if no such incident was reported, at least quarterly. The costs to the facilities would be staff time for the two (2) staff who would be involved in the

committee. Allotting one hour per review committee meeting, and the maximum number of meetings being twelve (12) per year, the maximum staff time that would be required for this task for two direct staff members would be a total of twenty-four (24) staff hours per facility per year. However, as the average facility reports approximately two (2) to three (3) reportable incidents per year, it is unlikely that the incident review committee would be obligated to meet more than on a quarterly basis.

Requiring two (2) staff members to participate in the incident review committee meetings approximately four (4) times a year, for an estimated one (1) hour meeting, would result in an estimated eight (8) hours of staff time per facility per year.

The final additional requirement for certain facilities is the reporting of occurrences constituting “reportable incidents” to the Justice Center, in addition to submitting an Incident Report to the Department of Health. Such facilities are currently required to submit Incident Reports to the Department of Health and, as to a subset of those incidents, to the Commission on Quality of Care and Advocacy for People with Disabilities (CQCAPD). Given the statutory replacement of the CQCAPD with the Justice Center, the regulations will simply provide for submission of specified reports to the Justice Center instead of the CQCAPD. Thus, in this aspect, there would be no additional costs to facilities. To the extent that such dual reporting may expand somewhat in scope, there may be some additional dual reporting. However, since the scope of what must be reported to the Department would remain essentially unchanged, the only increase in cost would be related to the expense of reporting to the second agency in a limited number of instances. The operator of a facility will also be required to make records available to the Justice Center, and to make certain records public upon Justice Center request. This, too, should require minimal additional staff time, as the details of the incident report and investigation must be in writing, pursuant the facility’s recordkeeping obligation. Thus, the only additional staff time involved for this requirement would be to photocopy such documents for use by the Justice Center, and to make public certain information related to reportable incidents as required by

the Justice Center. The facility is currently mandated to have records of incidents and facility's investigations available to Department surveyors, so this additional obligation would not impose significant new demands on the facility's staff, particularly since the likelihood of such request is low, and the overall numbers of reportable incidents per facility are small to begin with.

In calendar year 2014, those homes which would be effected (approximately 42) had 162 complaints of neglect/abuse. That equates to just under 3.9 complaints per effected home per year. Should the incidence of neglect or abuse remain the same, the duplicative reporting requirement would be of minimal financial impact on facilities. However, it is anticipated that after facility personnel are trained on the definition of "reportable incident" and the additional associated definitions, there may be an increase in reporting. Prior to the Justice Center's creation, sections 487 and 488 of 18 NYCRR did not contain explicit definitions for reportable incident or its constituent components. Therefore, it is possible that incidents of these types, particularly neglect, may have been historically under-reported. Although the Department cannot predict how many additional reports will be forthcoming, if any, for purposes of this cost-identifying exercise it can be estimated that a twenty percent (20%) increase may occur. Should that increase occur, facilities would have additional costs associated with reporting and investigation of such incidents. Estimating a twenty percent (20%) across-the-board increase would result, using 2014 abuse/neglect complaint numbers, in one hundred ninety-two (192) annual incidences of alleged abuse or neglect, or approximately five (5) per effected facility, as opposed to the current 3.9 annual incidents per facility.

Aside from the requirement that facilities train staff with regard to reportable incidents and reporting procedures, the costs imposed are made necessary by new statutory requirements. The long term results of this new rule may in fact, be of financial benefit to the facilities as it will enhance the ability to prevent incidents. Better hiring decisions, which include confirmation that potential employees do not have a history involving reportable incidents, could result in less time lost to

investigating alleged incidents of abuse, or to associated legal hearings, and could potentially result in less staff turnover. Staff time spent on the Incident Review Committee could result in recommendations for better practices, policies and procedures, which could lead to savings of staff time and costs to the facility.

Additionally, regulations adopted on January 16, 2013 that amended 18 NYCRR Part 487 to limit the number of residents with serious mental illness in adult homes will, over time, impact the number of facilities which will be under the auspices of the Justice Center, and may even reduce both the number of such facilities, and the number of mentally ill patients in those homes that remain. As the numbers of mentally ill individuals are decreased in homes, a parallel decrease in the number of alleged incidents of abuse or neglect should also occur.

Costs to the Agency and to the State and Local Governments Including this Agency:

It is estimated that implementation and continued administration of this rule will not impose any costs upon the Department, New York State, or its local governments. Of the 530 ACFs certified to operate in New York State, three (3) are public or county homes, of which none fall within the scope of the Justice Center required reporting facilities. Accordingly, the only additional cost imposed on those three (3) homes would be those nominal costs associated with training staff with regard to reportable incidents and reporting procedures, as described above.

Local Government Mandates:

This rule imposes no mandates upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

This rule imposes minimal new reporting requirements, forms or other paperwork upon regulated parties. Affected facilities will need to, on a one-time basis, with possible revisions as necessary, create policies and procedures for the investigation of alleged reportable incidents.

Currently, all facilities are required to have policies and procedures in place for investigation of incidents, making this new rule of minimal impact on most facilities. There may be some revision necessary to be made to some, but not necessarily all, facilities' policies and procedures.

The requirement to report all alleged reportable incidents to the Justice Center, although new, is merely a change of state agency or office to which the facility must report. Previously, facilities were required to report all alleged incidents of abuse or neglect to the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities. This new rule changes that reporting requirement to the Justice Center, only slightly expanding the scope of reporting. Hence, although the facilities will be reporting to a different State entity, there will be, at most, a minimal increase in paperwork.

Alternatives:

With the exception of the new requirement that even those facilities not within the purview of the Justice Center also train staff regarding the identification and reporting of reportable incidents, the amendments are required by statute, thus, there is no alternative to adherence by the affected parties. As to the portion not required, the Department considered not requiring those entities not subject to the purview of the Justice Center from having to train staff regarding the identification and reporting of reportable incidents,. However, the Department determined that it would best protect the public, and facilitate administration of general oversight, to impose the requirement uniformly on all adult homes and enriched housing programs.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register to ensure compliance with Chapter 501 of the Laws of 2012.

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect on Small Businesses and Local Governments:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the “Costs to Regulated Parties” section of the Regulatory Impact Statement.

Most of the five-hundred thirty (530) certified adult care facilities in New York State, including the twenty-seven (27) which fall under the purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

Three (3) facilities are operated by local governments, of which, none fall within the scope of the Justice Department required reporting facilities. Accordingly, the only additional cost imposed on those three (3) homes would be those nominal costs associated with obligations applicable to all adult homes and enriched housing facilities, as described in the “Costs to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

Compliance Requirements:

As the facilities operated by local governments are not among those within the purview of the Justice Center for the Protection of Persons with Special Needs (Justice Center), the only impact upon facilities operated by local governments will be those resulting from obligations applicable to all adult

homes and enriched housing facilities, as described in the “Costs to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

The three (3) affected facilities run by local governments will experience minimal additional regulatory burdens in complying with the amendment’s requirements, as functions related to Justice Center activities will not cause a need for additional staff or equipment.

Those facilities which constitute small businesses would be subject to additional requirements, as they include facilities both subject to, and not subject to, the purview of the Justice Center. The scope of the impact upon any given facility depends on whether it falls within the Justice Center's purview. Such obligations and impacts are fully described in the “Costs to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement. The amendments are not expected to create a need for any additional staff or equipment for those facilities.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date.

Professional Services:

No need for additional professional services is anticipated. Existing professional staff are expected to be able to assume any increase in workload resulting from the additional requirements.

Compliance Costs:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs), as described in the “Costs to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement. The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center’s jurisdiction. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for contacting the Justice Center, and establishing an Incident Review Committee, are already in place.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the “Alternatives” section of the Regulatory Impact Statement.

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

Consideration was given to including a cure period to afford adult home and enriched housing programs an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the Department’s ability to enforce the regulations for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

The Department will notify all New York State certified ACFs by a Dear Administrator Letter (DAL) informing them of this Justice Center expansion of the protection of vulnerable people. Regulated parties that are small businesses and local governments are expected to be prepared to participate in required Justice Center activities on the effective date of this amendment because the staff and infrastructure needed for performance of these are already in place.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the twenty-seven (27) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice Center), two (2) are located in rural counties, as follows: Genesee County and Rensselaer County. Of the 530 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

Reporting, recordkeeping and other compliance requirements are addressed in the “Costs to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Other Compliance Requirements:

Compliance requirements are discussed in the “Costs to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Professional Services:

There are no additional professional services required to comply with the proposed amendments.

Compliance Costs:**Cost to Regulated Parties:**

Compliance requirements and associated costs are discussed in the “Costs to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Economic and Technological Feasibility:

There are no changes requiring the use of technology. The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the “Alternatives” section of the Regulatory Impact Statement.

Rural Area Participation:

Of the twenty-seven (27) current facilities that will fall under the purview of the Justice Center, two (2) are located in rural counties, as follows: Genesee County and Rensselaer County. The Department will notify all New York State-certified adult care facilities (ACFs) by a Dear Administrator Letter (DAL) informing them of this expansion of requirements to protect people with special needs. Regulated parties in rural areas are expected to be able to participate in requirements of the Justice Center on the effective date of this amendment.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.